From the Editor:

Will the OECD Base Erosion Proposal Matter?

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There are mixed signals out of Europe about the significance of the OECD's recent discussion of base erosion and profit shifting (BEPS). On one hand, many governments and some practitioners are saying that the OECD's new emphasis on BEPS calls into question multinational tax planning techniques. But at a meeting in London, U.S. and U.K. government officials tried to make it clear that there would be no wholesale changes to the international transfer pricing consensus as a result of the BEPS draft.

Lee Sheppard reports on both events, and her articles might leave readers filled with more questions than answers. At an event in Amsterdam, officials and tax planners emphasized just how serious the OECD BEPS discussion is and how it will affect international tax planning for multinational corporations (p. 231). A Dutch official said that a multinational consensus was emerging and that stateless income will be addressed. A speaker from ING argued that aggressive tax planning was not going to pay off in the future. Sheppard asks the question whether multinational tax planning was over and writes that Europeans believe that the golden age for profit shifting has passed.

But an event in London seemed to call into question just how much change the OECD will end up pushing (p. 233). Sheppard reports that Ginny Chung of Treasury and a high-ranking HM Revenue & Customs official tried to assure practitioners that the arm's-length method and other accepted principles are not in any danger of complete replacement. Chung said that some areas might be due for incremental changes, but that there will be no overhaul of permanent establishment rules. An OECD official at the conference echoed the government speakers, saying there would be no material changes to the rules and that multilateral proposals would help defuse political pressure. After the meeting, Sheppard wondered if the OECD's base erosion efforts were being eroded.

Base erosion and profit shifting are becoming increasingly unacceptable to revenue agencies and their associated governments. The OECD might be the last to realize this, but that makes its BEPS draft all the more important. If even the most ardent defender of the arm's-length method is questioning how current rules are undermining tax bases and leading to transactions without substance, then multinationals should be prepared to alter the way they conduct their tax affairs in the future. Treasury is not exactly a bastion of progressive thinking on transfer pricing, but Chung's comments seem to indicate a shocking amount of tone-deafness to what is being discussed on Capitol Hill. Every major reform plan, by both Republicans and Democrats, includes some antiabuse and anti-base erosion proposals. If Treasury thinks that means that the current rules are fine, it might be in for a rude awakening if the political tide continues to move in its current direction.

Obama Budget

President Obama's budget was released last week (p. 225). It didn't contain too many surprises, mostly recycling the same proposals that he has pushed in the past. The budget did include a new method to try to cap IRA contributions (although it's not exactly a hard cap, p. 252) and an increase in tobacco taxes to pay for universal preschool. The budget was greeted skeptically by both Democrats (who opposed its use of a chained CPI) and Republicans (who complained that Obama continues to seek higher taxes). It was also a disappointment to those who thought the president might push his own business tax reform plan (p. 228). Whether Obama's budget will help or hinder tax reform is an open question, but Senate Finance Committee Chair Max Baucus and House Ways and Means Chair Dave Camp intend to push forward with their own efforts regardless (p. 254).

David Brunori argues that Obama's use of tobacco taxes to pay for preschool is poor tax policy (p. 302). In his viewpoint, Brunori highlights the contradiction in tying a tax that is supposed to deter conduct (in this case smoking) with a program of supposed importance.

Obama's budget contained one new international reform element: a call for reciprocal information sharing to complement FATCA (p. 237). It did not endorse Camp's proposal for a territorial system. Jeffery Kadet writes that is a good thing, and criticizes politicians and businesses that are lobbying to move the United States away from its worldwide system of taxation (p. 295). He argues that a territorial system provides more incentives for multinational companies to move operations, assets, and jobs offshore. It can result in double nontaxation, he finds. He concludes that the best system would be a fully inclusive worldwide regime, which would increase the tax base and help make possible the overall rate reduction sought by policymakers.

Tax Day

April 15 is probably few people's favorite day of the year. To help get practitioners and taxpayers through this anti-holiday, *Tax Notes* has 101 tax quotes compiled and arranged by Jeffery Yablon (p. 323), a crossword puzzle (p. 338), and tax poems by Robert Wood (p. 332). Joseph Thorndike discusses how the decision to rely on an income tax instead of a national consumption tax has influenced the growth of antitax movements like the Tea Party and the establishment of April 15 as a day that undermines people's faith in government (p. 223).

Commentary

The release of Obama's budget, combined with a joint editorial in *The Wall Street Journal* by Camp and Baucus, has highlighted how tax reform might move forward in Washington. At the center of the discussion is how to pay for any sort of revenue-neutral or even deficit-reducing changes to the corporate and individual tax systems. It seems likely that tax expenditures will be affected by any bill produced by Congress. Calvin Johnson argues that when looking at tax expenditure budgets, the Office of Management and Budget and the Joint Committee on Taxation should be looking at internal rate of return as the basis for measurement (p. 273). The effect of tax on internal rate of return is how businesses determine how to allocate capital, and government should be using the same method, he argues. Johnson targets bonus depreciation using his measurement proposal and finds that it causes economic harm. On a related issue, Bruce Bartlett criticizes policymakers who would like to force the JCT to use dynamic scoring (p. 309). Dynamic scoring is much more labor intensive and is less accurate, he argues.

The home office deduction is one of the most heavily audited individual tax provisions. The IRS has been accused of being too aggressive, sometimes even going to taxpayers' homes to measure the space allocated to the home office in question. In 2013 the Service created a new safe harbor for the home office deduction (Rev. Proc. 2013-13) that provided an alternative method of calculating and substantiating expenses. Timothy Koski says the safe harbor method simplifies the calculation, but it does not always result in the maximum deduction (p. 289). He recommends that tax planners analyze home office expenses each year to determine which method of calculation is most beneficial.

Identity theft continues to be a growing source of refund fraud. The IRS is now concerned about the vulnerability of seniors and nonfilers to identity thieves (p. 246). Charles Lacijan says it is not just on the government to prevent refund fraud (p. 303). He writes that there are things taxpayers can do to protect their identities. Allowing taxpayers to apply for IP PINs would be a positive step in addressing refund fraud, he writes. It would show that the government is open to a proactive approach and it would help spread the burden for fighting this growing problem among taxpayers and the IRS, he concludes.

In What Were They Thinking, Jasper Cummings, Jr., rebuts the benefits and burdens theory of ownership in AM 2012-007 (p. 313). In the memorandum, the IRS concludes that a consolidated group cannot rent its way into affiliation with a subsidiary. Cummings criticizes the Service's approach to looking at ownership questions and reminds IRS attorneys that they are also lawyers and must look to state law to analyze some of these issues.

In a humorous look at pro golfer Sergio Garcia's recent Tax Court case, Mark Weinstein says that Garcia's recent poor play helped the Tax Court deviate from rules established in a case involving Retief Goosen (p. 331). ■